

### **REMARKS**

A terminal disclaimer pursuant to 37 CFR §1.321(c) is filed along with this amendment. A check in the amount of \$65 for the required fee pursuant to 37 C.F.R. §1.20(d) accompanies the terminal disclaimer. Because the Amendment is filed within three months of the Office Action, no fee is due. However, if it is determined that a fee for the amendment is due, the Commissioner is authorized to charge any fees that may be due in connection with the filing of this paper or with this application to Deposit Account No. 06-1050. If a Petition for Extension of time is needed, this paper is to be considered such Petition.

The Office Action Summary states that Claims 1-9, 15-24, 33 and 34 are pending in the application. This is incorrect. After entry of the amendment filed September 18, 2006, claims 35-52 are pending in the present application. Claim 46 is amended herein to more clearly define the subject matter claimed. No new matter has been added.

#### **Provisional rejection of claims 35, and 46 – 51**

Claims 35, and 46 – 51 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5, 7 and 9 of copending application no. 10/825,916.

A terminal disclaimer pursuant to 37 CFR §1.321(c) is filed along with this amendment to overcome the nonstatutory double patenting rejection.

#### **Rejection of claim 46 under 35 U.S.C. §112**

Claim 46 stands rejected under 35 U.S.C. §112 as allegedly being indefinite for lacking a proper antecedent for the phrase "the first vertebra" in line 2 of the claim. Claim 46 is amended herein to more clearly define the claimed subject matter. This amendment finds basis in claim 35, the claim on which it depends. The phrase "the first vertebra" in amended claim 46 is correct and needs no antecedent in that there is only one "first vertebra" in the human anatomy.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify

Applicant : M. Samy Abdou  
Serial No. : 10/755,080  
Filed : January 10, 2004  
Page : 6 of 6


Attorney's Docket No.: 17348-016001  
Reply to Office Action

agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants respectfully submit that the pending claims are now in condition for allowance and respectfully request the same. If the Examiner has any questions regarding the foregoing, he is cordially invited to contact the undersigned so that any such matters may be promptly resolved.

Respectfully submitted,

Date: February 7, 2007

  
\_\_\_\_\_  
Fred C. Hernandez  
Reg. No. 41,832

**PTO Customer No.: 20985**  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5625  
Facsimile: (858) 678-5099  
Email: fhernandez@fr.com